

## Foreword

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### I. INTRODUCTION

This issue of the *Seton Hall Law Review* highlights contributions to *When the Fighting Stops: Roles and Responsibilities in Post-Conflict Reconstruction*, a day-long Symposium held at Seton Hall University School of Law in the fall of 2007.<sup>1</sup> The proceedings were dedicated to analyzing national and international efforts following conflict, primarily civil conflict, to create a stable and peaceful society and to prevent a recurrence of violence.<sup>2</sup> Programs and policies on post-conflict reconstruction are thus intended to stabilize regions riven by conflict, restore law and order where possible, and transform the legal, political, and economic order into a sustainable peace.

Scholars and practitioners have employed various terms to describe efforts to perpetuate peace in societies following conflict, in-

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<sup>1</sup> Symposium: When the Fighting Stops: Roles and Responsibilities in Post-Conflict Reconstruction, Nov. 2, 2007, Seton Hall School of Law, Newark, New Jersey. Members of the Steering Committee for the Conference were, in addition to Professors Boon and Moremen, Professor Valerie Oosterveld, Faculty of Law, University of Western Ontario, and Professor Jenia Iontcheva Turner, Southern Methodist University Dedman School of Law. The Steering Committee would like to thank the following individuals for their assistance and guidance: Donald Steinberg, Ian Johnstone, Ben Rowswell, Lawrence Moss, and Ambassadors John Menzies, Clay Constantinou, and George Bruno. The Steering Committee would also like to thank the following editors of the *Seton Hall Law Review* for their efforts in organizing the Symposium and this Symposium Issue of the *Seton Hall Law Review*: Randy Samson, Symposium Editor of Volume 38; David Simunovich, Editor-in-Chief of Volume 38; and Trevor Berrett, Editor-in-Chief of Volume 39.

<sup>2</sup> This definition is adapted from Roland Paris's definition of peacebuilding: "an activity that takes place in a post-civil war environment, the purpose of which is to create the conditions for a stable and lasting peace and to prevent the recurrence of large-scale violence." Alina Rocha Menocal & Kate Kilpatrick, *Towards More Effective Peace Building: A Conversation with Roland Paris*, 15 DEV. IN PRAC. 767, 767 (Nov. 2005).

cluding peacebuilding,<sup>3</sup> nation-building,<sup>4</sup> and post-conflict reconstruction.<sup>5</sup> Often, these terms are used casually, almost interchangeably. But to some extent differences in vocabulary reflect differences in ideology or differences in emphasis on the particular activities that should be included in post-conflict remediation.<sup>6</sup> We do not take a rigid view of these definitional issues. We use the term post-conflict reconstruction functionally to refer to the rebuilding of society following conflict involving efforts to provide and improve social and economic well-being, governance and participation, justice and reconciliation, and security.<sup>7</sup> We choose the term in part because it emphasizes the role of authority, allocation of legal powers amongst states and international organizations, justice, and reconciliation, which is the province of international law and international lawyers.<sup>8</sup> The conference panels were designed to address four ques-

<sup>3</sup> See, e.g., MICHAEL W. DOYLE & NICHOLAS SAMBANIS, MAKING WAR & BUILDING PEACE 22–23 (2006); Menocal & Kilpatrick, *supra* note 2, at 767.

<sup>4</sup> See, e.g., JAMES DOBBINS ET AL., THE BEGINNER'S GUIDE TO NATION-BUILDING xvii (2007).

<sup>5</sup> See William J. Durch & Tobias C. Berkman, *Restoring and Maintaining Peace: What We Know So Far*, in TWENTY-FIRST-CENTURY PEACE OPERATIONS 1, 9 (William J. Durch ed., 2006) (describing the lack of a consensus definition for peacebuilding and related terms).

<sup>6</sup> See Michael Barnett et al., *Peacebuilding: What Is in a Name?*, 13 GLOBAL GOVERNANCE 35 (2007) (describing different usages for “peacebuilding” depending on the specific U.N. agency, international organization, or member state agency involved); Charles T. Call & Elizabeth M. Cousens, *Ending Wars and Building Peace: International Responses to War-Torn Societies*, 9 INT’L STUD. PERSP. 1, 3–4 (2008) (describing different definitions of “peacebuilding” and related terms).

<sup>7</sup> See John J. Hamre & Gordon R. Sullivan, *Toward Postconflict Reconstruction*, WASH. QTRLY, Autumn 2002, at 85, 89–90. This definition was included in a report to U.S. policymakers sponsored by the Center for Strategic and International Studies (CSIS) and the Association of the U.S. Army (AUSA) entitled *Play to Win: Report of the Bipartisan Commission on Post-Conflict Reconstruction* (2003), followed by a book that fleshed out the report’s recommendations, WINNING THE PEACE (Robert C. Orr ed., 2004). See Durch & Berkman, *supra* note 5, at 24. Recent usage within the Department of Peacekeeping Operations appears to include the same elements. See, e.g., U.N. Dep’t of Peacekeeping Operations and Dep’t of Field Support, *United Nations Peacekeeping Operations: Principles and Guidelines* 25 (2008) (citing Report of the Secretary-General, *No Exit without Strategy: Security Council Decision-making and the Closure or Transition of United Nations Peacekeeping Operations*, U.N. Doc. S/2001/394 (Apr. 20, 2001)) (sustainable peace requires security and public order, rule of law and respect for human rights, legitimate political institutions and participatory processes, social and economic recovery and development), available at [http://pbpu.unlb.org/PBPS/Library/Capstone\\_Doctrine\\_ENG.pdf](http://pbpu.unlb.org/PBPS/Library/Capstone_Doctrine_ENG.pdf).

<sup>8</sup> Indeed, some international legal scholars have focused on the development and content of a *jus post-bellum*, international law governing post-conflict situations. See Kristen E. Boon, *Legislative Reform in Post-conflict Zones: Jus Post Bellum and the Contemporary Occupant’s Law-Making Powers*, 50 MCGILL L.J. 285 (2005); Carsten Stahn, *‘Jus ad Bellum,’ ‘Jus in Bello,’ ‘Jus Post Bellum’?: Rethinking the Conception of the Law of*

tions on post-conflict reconstruction, discussed respectively in Parts II, III, IV, and V of this Foreword. Who should be involved in post-conflict reconstruction? How should actors be coordinated, and where conflicts between the actors or their agendas arise, how should they be resolved? What legal and ethical obligations bind those actors? How do U.S. policies on post-conflict reconstruction complement or conflict with those of international institutions? This last question is particularly relevant because since September 11, 2001, the United States has played an especially dominant role in post-conflict reconstruction given the size, importance, and scope of its operations in Iraq and Afghanistan. Finally, what lessons for the future has the United States learned from its experiences in Iraq and Afghanistan? Our discussion follows and relies on the insights of the Symposium's panels and contributors.

## II. ACTORS

A century ago, the actors involved in transitions between war and peace were limited. Prior to the creation of the League of Nations, typically only colonial powers and the states directly affected were engaged in the process.<sup>9</sup> The landscape today is very different. There are now a multitude of interested parties engaged in all aspects of peacebuilding, ranging from interested states to the United Nations and its agencies, international financial institutions (IFIs), including the World Bank and the International Monetary Fund (IMF), and a wide variety of nongovernmental organizations (NGOs).

The reconstruction of Iraq illustrates the thick web of institutions that assume a role in modern peacebuilding. The United States and United Kingdom took on the lion's share of the reconstruction responsibilities, given their initial involvement in the invasion, but other countries and organizations were involved throughout. Japan, Kuwait, Spain, China, United Arab Emirates, Slovakia, the IMF, the World Bank, and the European Union all pledged funds at the 2003 donor conference in Madrid.<sup>10</sup> Moreover, international organizations played a major management role in the disbursement of the funds.<sup>11</sup> In addition, eighty international and two-hundred national

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*Armed Force*, 17 EUR. J. INT'L L. 921 (2006); Carsten Stahn, *Jus Post Bellum: Mapping the Discipline(s)*, 23 AM. U. INT'L L. REV. 311 (2008).

<sup>9</sup> RALPH WILDE, INTERNATIONAL TERRITORIAL ADMINISTRATION 47 (2008).

<sup>10</sup> Ester Pan, *Iraq: Madrid Donor Conference*, BACKGROUNDER, Oct. 30, 2003, <http://www.cfr.org/publication/7682/>.

<sup>11</sup> The International Reconstruction Fund Facility for Iraq (IRFFI) was launched in 2004 by the United Nations and the World Bank to manage the funds raised and to help donor nations channel their resources and coordinate their support for re-

NGOs have been involved in the reconstruction on the ground, creating a third layer of institutions, policies, and activities.

The great number of actors who descend into the vacuum of a post-conflict situation face a number of challenges, including two of the most vexing. First, whom do they represent? The international community? Their own constituencies? The people of the country itself? Answers to those questions necessarily inform each actor's policies and agendas. Second, must those actors promote certain principles such as equitable representation, democracy, or free speech, consistent with contemporary norms of human rights and governance?

Issues of representation and ownership are taken up by Graciana del Castillo in her assessment of the IFIs' role in post-conflict reconstruction.<sup>12</sup> The IMF, which helps countries to rebuild their capacity in the fiscal, monetary, and statistical areas, and the World Bank, which focuses on rebuilding the microeconomic foundations for investment, employment, and growth, have become important players in post-conflict economic reconstruction.<sup>13</sup> Representation has become an issue for the IFIs because, as del Castillo notes, the neutrality of the IMF has been challenged, particularly as it involves "ownership" of market-based reforms.<sup>14</sup> Countries with weak fiscal and high debt profiles, that have accepted aid and committed to extensive domestic reform, have been the subject of particular criticism because the funds have been used as leverage to exact considerable and sometimes detrimental domestic institutional and legal changes.<sup>15</sup>

Julie Mertus's discussion of the participation of women in the operation of the International Criminal Tribunal of the Former Yugoslavia (ICTY) provides further insights on the issue of represen-

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construction and development in Iraq. The Facility has two trust funds for donor contributions, each with its own characteristics and procedures: The World Bank Iraq Trust Fund, administered by the World Bank Group, and The United Nations Development Group (UNDG) Iraq Trust Fund (ITF) administered by the United Nations Development Programme (UNDP) on behalf of itself and Participating United Nations Organizations. See World Bank Iraq Trust Fund, <http://www.irffi.org/WBSITE/EXTERNAL/IRFFI/0,,contentMDK:20241701~hlPK:537994~menuPK:64168620~pagePK:64168627~piPK:64167475~theSitePK:491458,00.html> (last visited Nov. 6, 2008).

<sup>12</sup> Graciana del Castillo, *From War to Peace: The Development-Plus Challenge of Reconstruction and the Role of the International Financial Institutions*, 38 SETON HALL L. REV. 1265 (2008).

<sup>13</sup> *Id.* at 1276.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

tation in international organizations.<sup>16</sup> From her perspective, not only must international organizations achieve gender integration, but “an international criminal court functions better when women are included in all roles and levels.”<sup>17</sup> In general, Mertus opposes simplistic prescriptions for the inclusion of women in transitional justice, which she characterizes as the “add woman and stir” approach.<sup>18</sup> Nevertheless, in her study of the ICTY, she found that the participation of women made a clear and positive contribution. The participation of women in all aspects of the ICTY’s creation and operation positively affected the inclusion and valuing of women witnesses and the development of wartime rape and sexual violence as crimes under international law. Moreover, the experience of women at the ICTY raised the bar for participation and gender expertise among the staff of criminal tribunals.<sup>19</sup>

### III. COORDINATION

The second theme addressed at the conference was coordination. Coordination in the peacebuilding context includes not only coordination between categories of actors—states, intergovernmental organizations (IGOs), and NGOs—but also internal coordination within institutional bureaucracies.<sup>20</sup>

In its most basic sense, coordination involves dividing the tasks at hand and developing processes for determining appropriate goals.<sup>21</sup> In a deeper sense, coordination necessarily implies prioritization—in other words, deciding on the most important tasks and goals.<sup>22</sup> When

<sup>16</sup> Julie Mertus, *When Adding Women Matters: Women’s Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY)*, 38 SETON HALL L. REV. 1297 (2008).

<sup>17</sup> *Id.* at 1324.

<sup>18</sup> *Id.* at 1298.

<sup>19</sup> *Id.* at 1324.

<sup>20</sup> For a discussion of coordination problems regarding peacebuilding among U.N. agencies, see Susanna P. Campbell, *(Dis)integration, Incoherence and Complexity in UN Post-conflict Interventions*, 15 INT’L PEACEKEEPING 556, 559–560 (2008) (applying a bureaucratic politics perspective). See also generally MICHAEL BARNETT & MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* (2004) (developing a model of bureaucratic politics and applying it to international organizations, including the U.N. peacekeeping bureaucracy).

<sup>21</sup> See Simon Chesterman, *From State Failure to State-Building: Problems and Prospects for a United Nations Peacebuilding Commission*, 2 J. INT’L L. & INT’L REL. 155, 171 (2005) (identifying problems of coordination arising at three levels: the strategic level, the operational level within countries, and the national level).

<sup>22</sup> See Roland Paris & Timothy D. Sisk, *Managing Contradictions: The Inherent Dilemmas of Postwar Statebuilding* 6 (Nov. 2007) (Paper for the Int’l Peace Academy)

actors have different priorities, or perspectives on priorities, the result is not a matter of simple coordination but of contestation, of dispute, of politics.<sup>23</sup> The use of the term “coordination” masks this reality<sup>24</sup> and requires an investigation into how post-conflict reconstruction should be sequenced.

A key new player in the coordination of post-conflict activities is the Peacebuilding Commission (PBC). Rob Jenkins’s Essay in this Symposium issue explores the effectiveness of the PBC in accomplishing this goal.<sup>25</sup> The intended purpose of the PBC was not to prevent conflicts but to coordinate the efforts of actors in post-conflict reconstruction, direct attention to post-conflict countries, and marshal additional resources for post-conflict countries.<sup>26</sup> The primary impetus behind the PBC’s creation was the perceived need for cooperation and coordination between the United Nations, relevant U.N. agencies, the IFIs, and other international actors.<sup>27</sup>

A joint resolution of the Security Council and the General Assembly established the PBC in late 2005.<sup>28</sup> The PBC consists of repre-

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(making a similar distinction), *available at* [http://www.statebuilding.org/resources/RPPS\\_report.pdf](http://www.statebuilding.org/resources/RPPS_report.pdf).

<sup>23</sup> On a related point, Rob Jenkins notes, in his Article for this Symposium, [I]t is not until U.N. reforms are formally in place—that is, only after an institution has been restructured, or a policy premise revised—that the most intense phase of contestation begins. Member-states, U.N. agencies, Secretariat departments, insider [NGOs], the various U.N. Councils and Commissions—each seeks to steer the new structures to its own purposes . . . .

Rob Jenkins, *Organizational Change and Institutional Survival: The Case of the U.N. Peacebuilding Commission*, 38 SETON HALL L. REV. 1327, 1333 (2008).

<sup>24</sup> *See id.* at 1329 n.11. *See also* Paris & Sisk, *supra* note 22, at 6 (Efforts to improve coordination can serve as a substitute for achieving substantive cooperation, by focusing on process and away from substantive and strategic challenges.).

<sup>25</sup> Jenkins, *supra* note 23.

<sup>26</sup> *See* S.C. Res. 1645, U.N. Doc. SS/RES/1645 (Dec. 20, 2005); G.A. Res. 60/80, ¶ 2, U.N. Doc. A/RES/60/80 (Dec. 12, 2005) [hereinafter Joint Resolution]; Carsten Stahn, *Institutionalizing Brahimi’s Light Footprint: A Comment on the PBC’s Role and Mandate*, 2 INT’L ORG. L. REV. 403, 406 (2005).

<sup>27</sup> *See* Jenkins, *supra* note 23, at 1328–30 (Coordination among actors was clearly the main goal, allowing the achievement of the other secondary goals.); Boon, *supra* note 8, at 522 (creation of PBC resulted from calls for cooperation between the United Nations and IFIs). Additional motivations included the lack of coordination within the United Nations, the lack of international attention to post-conflict countries, and the lack of financing for reconstruction efforts. *See* U.N. High-Level Panel on Threats, Challenges and Changes, *A More Secure World: Our Shared Responsibility*, ¶¶ 224–30 (Dec. 2, 2004), <http://www.un.org/secureworld/report.pdf>. *See also* NYU Ctr. on Int’l Cooperation and Int’l Peace Inst., *Taking Stock, Looking Forward: A Strategic Review of the Peacebuilding Commission* 11 (2008) [hereinafter *Taking Stock*], *available at* <http://www.ipacademy.org/asset/file/305/PBCsrev08.pdf>.

<sup>28</sup> *See* Joint Resolution, *supra* note 26.

sentatives from thirty-one member states<sup>29</sup> drawn from various stakeholder groups within the membership of the United Nations.<sup>30</sup> The PBC is supported by a Peacebuilding Support Office (PBSO) and a Peacebuilding Fund (PBF), both under the authority of the Secretary General.<sup>31</sup> The Peacebuilding Fund (PBF) provides funding for peacebuilding activities in the short-term.<sup>32</sup> The PBSO has three functions: to support the PBC, manage the IMF, and assist the Secretary General in bringing together peacebuilding actors in the U.N. system.<sup>33</sup>

The PBC has a hard row to hoe in improving coordination with other actors, given the number and variety of organizations and states involved in peacebuilding. Within the United Nations, the PBC must coordinate actions and policy with other member states, with other U.N. organs, and with the U.N. bureaucracy. Outside of the United Nations, the PBC must coordinate with the IFIs, civil society participants clamoring for a seat at the table, and states that are not members of the PBC, which often includes host states.

The PBC has little coercive power. As Jenkins points out, the PBC's interstate character means that the PBC has no executive authority and, thus, cannot direct or control U.N. agencies,<sup>34</sup> let alone other IGOs or states. The PBC was designed as an interstate body precisely so that states could retain as much control over peacebuilding strategy as possible and so that the PBC would have a limited operational capacity and, hence, limited effect.<sup>35</sup>

Because the PBC consists of members of the various stakeholder groups of states, moreover, the conflicts between those states tend to replicate themselves in the PBC. Most notable are tensions between

<sup>29</sup> Seven members come from the Security Council, seven from the General Assembly, seven from the Economic and Social Council, five from among the top ten troop-contributing countries, and five from among the top ten donor countries. *See id.* ¶ 4.

<sup>30</sup> *See* Jenkins, *supra* note 23, at 1334.

<sup>31</sup> *See* Joint Resolution, *supra* note 26, ¶¶ 23–24.

<sup>32</sup> The IMF is not institutionally linked to the PBC but instead operates under the Secretary General. The PBC can request the Secretary General to allocate monies from the IMF to countries on its agenda, as it did with Burundi and Sierra Leone. *See* Security Council Report, *Special Research Report: Peacebuilding Commission*, Oct. 5, 2007, at 2, available at [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Research%20Report\\_PBC%205%20Oct%2007.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Research%20Report_PBC%205%20Oct%2007.pdf)

<sup>33</sup> *See id.*

<sup>34</sup> Jenkins, *supra* note 23, at 1328.

<sup>35</sup> *See* Stahn, *supra* note 26, at 407, 411 (arguing that its “low profile” design is consistent with U.N. advocacy and restraint on peacebuilding issues generally); Chesterman, *supra* note 21, at 169–70 (describing reduction in scope and design for PBC from original proposal because of pressure from states).

the North and the South and related tensions between member states of the Security Council and member states of the General Assembly.<sup>36</sup> Both sets of tensions generally involve a conflict between those who favor security interests and those who favor development. Difficulties in coordination also exist between the PBC, on the one hand, and the U.N. Security Council and General Assembly, on the other. Members of the Security Council and the General Assembly have complained about the lack of communication and information coming from the PBC.<sup>37</sup>

An important area of PBC activity has been the development of peacebuilding strategies for the countries on its agenda.<sup>38</sup> Burundi and Sierra Leone were the first countries to be placed on the PBC's agenda, followed by Guinea Bissau and the Central African Republic. The essential idea behind the Integrated Peacebuilding Strategies (IPBSs) is to develop a common approach to reconstruction, endorsed by the relevant national government, local civil society, the IFIs, and other outside donors.<sup>39</sup> According to Jenkins, the IPBSs for Burundi and Sierra Leone have had, at best, a mixed success to date.<sup>40</sup> For one thing, the IPBS largely replicates various existing planning processes and documents.<sup>41</sup> Nevertheless, Jenkins states, there are suggestions that the PBC and the IPBS process have had

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<sup>36</sup> See Jenkins, *supra* note 23, at 1331; *Taking Stock*, *supra* note 27, at 5 (The role of the Organizational Committee "has been clouded by its use as a proxy in the ongoing battle over the balance of power between the Security Council and the General Assembly.").

<sup>37</sup> See, e.g., U.N. SC, 62nd year, 5761st mtg., U.N. Doc. S/PV.5761 (provisional) (Oct. 17, 2007) (containing both speeches of representatives regarding post-conflict peacebuilding and remarks of Russian and U.K. representatives); U.N. Dept. of Public Information, *General Assembly Debates Reform on Peacebuilding Commission's First Year; Speakers Cite Promising Start, Call for Maximum Impact on the Ground*, U.N. Doc. GA/10635, (Oct. 10, 2007) (reporting on 62nd General Assembly Plenary, remarks of German representative), available at <http://www.un.org/News/Press/docs/2007/ga10635.doc.htm>.

<sup>38</sup> The PBC's founding resolutions called for the development of peacebuilding strategies in general terms. See Joint Resolution, *supra* note 26, ¶ 2(b).

<sup>39</sup> See Jenkins, *supra* note 23, at 1331; *Taking Stock*, *supra* note 27, at 13.

<sup>40</sup> See Jenkins, *supra* note 23, at 1331.

<sup>41</sup> See *id.* The most significant of these is the Poverty Reduction Strategy Paper (PSRP), required by the IFIs, which governments must satisfy to be eligible for concessional lending or debt-relief. See *id.* at 1343. Because the IPBS process is duplicative, there is evidence that it has led to "strategy fatigue" on the part of national participants. See *Taking Stock*, *supra* note 27, at 15 (describing experience in Sierra Leone). On occasion, the process may have overtaxed domestic capacity. See Security Council Report, *supra* note 32, at 6–7 (creation of the strategic framework in Burundi put strain on U.N. Country Team and on government, leading to a decision by the PBC to accept an incomplete framework and defer work on monitoring mechanisms, which was later completed).



some effect at the margins in these countries in changing the mix in priorities between economic and policy goals.<sup>42</sup>

The PBC has also managed to provide openings for developing countries, some donor governments, and some U.N. staff to contest the influence of the IFIs over national development planning.<sup>43</sup> While these successes are “minor,” they have, says Jenkins, demonstrated the PBC’s ability to create an institutional niche, which bodes well for its survival.<sup>44</sup> Thus, these successes could presage the ability of the PBC to establish itself and eventually effect real policy change. From an international legal perspective, institutional processes have the potential to alter policy by coercing participants to take account of the preferences of others, and by requiring them to justify publicly their own preferences.<sup>45</sup> Process, therefore, has the potential to generate substantive results.

At least one other set of commentators has identified additional, broader successes. The PBC’s efforts in Burundi and Sierra Leone may have led to sustained international attention<sup>46</sup> which contributed to a peaceful election in Sierra Leone.<sup>47</sup> Furthermore, the IPBS process, in addition to resolving some tensions between financial and political aspects of peacebuilding, may create consensus among actors on priorities. As such, these commentators assert, it could serve as a means for making actors (such as donors) accountable for meeting their commitments.<sup>48</sup> The prospect of using the IPBS as an accountability tool, however, runs up against the inherent limitations of the PBC that Jenkins identifies: lack of executive authority and limited operational capability.<sup>49</sup> It remains to be seen whether bureaucratic nimbleness can overcome these significant stumbling blocks.

Coordination leads to a second inquiry: what should the priorities be among the different goals in post-conflict reconstruction, which include social and economic well-being, governance and participation, justice and reconciliation, and security? Two primary conflicts are between long-term economic development and security, and justice and security.

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<sup>42</sup> See Jenkins, *supra* note 23, at 1346.

<sup>43</sup> See *id.* at 1339, 1344.

<sup>44</sup> See *id.* at 1332.

<sup>45</sup> See, e.g., ABRAM CHAYES ET AL., INTERNATIONAL LEGAL PROCESS (1968). See also Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 Yale L.J. 2599, 2618–20 (1997) (describing the international legal process school).

<sup>46</sup> See *Taking Stock*, *supra* note 27, at 3, 16.

<sup>47</sup> See *id.* at 16.

<sup>48</sup> See *id.* at 4.

<sup>49</sup> See Jenkins, *supra* note 23, at 1328.

A. *Economic and Social Well-Being Versus Security and Governance*

Both the IFIs and the United Nations play a role in post-conflict economic reconstruction. The Security Council, by virtue of its Chapter VII powers, is responsible for peacebuilding generally. The IFIs, in contrast, have become involved in providing assistance to fragile states in order to assist transitional countries to develop modern and coherent economic policies, and ensure the stability of the international economic system. Accordingly, there is a need for coordination and prioritization between the political preferences of the United Nations and the economic preferences of the IFIs.

Before the 1990s, the United Nations concerned itself with the politics of maintaining peace, rarely venturing into the economic realm.<sup>50</sup> Similarly, the IFIs devoted their attention to economic stability and long-term development assistance, and stayed away from the political tasks of reconstruction.<sup>51</sup> In the 1990s, however, the IFIs began engaging in reconstruction efforts at the encouragement of the Clinton Administration, which recognized that the IFIs could be a source of financing and expertise “in all the nuts and bolts of nation-building.”<sup>52</sup> The Security Council, too, came to realize that successful post-conflict reconstruction necessarily required a greater focus on the economic policies and programs of recovering states. The seeds of inter-institutional conflict were thus sown.<sup>53</sup> The IFIs tend to promote liberal and market-oriented economic policies, whereas the United Nations tends to promote stability and security, respect for

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<sup>50</sup> For a discussion of the converging attention of the United Nations and the IFIs to economic matters in post-conflict reconstruction, see Kristen E. Boon, “Open for Business”: *International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law*, 39 N.Y.U. J. INT’L L. & POL. 513, 519–26, 553–68 (2007).

<sup>51</sup> Indeed, the IFIs were designed to be apolitical and were specifically enjoined from engaging in political affairs. The World Bank’s Articles of Agreement state, “The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially. . . .” Int’l Bank for Reconstruction and Dev. Articles of Agreement, art. IV, § 10, opened for signature Dec. 27, 1945, T.I.A.S. No. 1502, 2 U.N.T.S. 134, as amended Feb. 16., 1989, available at <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf>.

<sup>52</sup> Boon, *supra* note 50, at 523 (quoting Sebastian Mallaby, *It Pays for the U.S. to Go to the Bank*, WASH. POST, Sept. 26, 2004, at B3).

<sup>53</sup> This conflict between the IFIs and the U.N. specialized agencies, moreover, may just be a more recent skirmish in a long-running battle. Jenkins points out that officials in the U.N. specialized agencies have long sought ways to counter the influence of the IFIs in overall national development planning. Jenkins, *supra* note 23, at 1342.

norms of human rights, and governance. In the view of critics—including representatives of developing countries and U.N. staff—these market-based policies can cause social disruptions that undermine peace and security and the development of stable political institutions.<sup>54</sup>

Graciana del Castillo, in her Essay in this Symposium issue, supports the critique of IFI market-oriented policies, at least when implemented without regard for the difficulties post-conflict societies face.<sup>55</sup> She argues that the immediate need for funding initiatives that support peace should take priority over policies that contribute to long-term economic development. The IFIs have tended to treat post-conflict reconstruction like development as usual. Post-conflict countries, however, must reconcile economic development, national reconciliation, and peace consolidation. Accordingly, reconstruction may require short-term policies that distort the economy temporarily, and differ from policies that contribute to longer-term development.

#### *B. Justice and Reconciliation*

The justice and reconciliation aspect of post-conflict reconstruction includes the adoption of mechanisms to impose accountability for crimes and abuses that occurred during conflict. It also involves the development of an effective and fair legal system that promotes the rule of law, which, at a minimum, requires functioning law enforcement systems, courts, and corrections institutions.<sup>56</sup> An impartial and effective administrative system must have procedures in place to combat corruption and manipulation,<sup>57</sup> and promote transparency, predictability, and fairness in the promulgation of rules.<sup>58</sup>

Accountability mechanisms may contribute to peace in various ways.<sup>59</sup> For example, accountability mechanisms draw a line between the past and the present, and signal the establishment of a new order. Ambassador Clint Williamson put this point another way in his keynote speech, stating that failure to provide accountability undermines

<sup>54</sup> See *id.* at 1341 (regarding this view among U.N. staff and academics); Boon, *supra* note 50, at 550–51 (criticizing IFI market-oriented policies for their social costs, lack of legitimacy, and inconsistency with the value of self-determination).

<sup>55</sup> del Castillo, *supra* note 12.

<sup>56</sup> See Hamre & Sullivan, *supra* note 7, at 91.

<sup>57</sup> See Neil J. Kritz, *The Rule of Law in Conflict Management*, in *LEASHING THE DOGS OF WAR: CONFLICT MANAGEMENT IN A DIVIDED WORLD* 401, 406–10 (Chester A. Crocker, Fen Osler Hampson & Pamela Aall eds., 2007).

<sup>58</sup> See *id.* at 408–09.

<sup>59</sup> See, e.g., *id.* at 410–13; David Mendeloff, *Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?*, 6 INT'L STUD. REV. 355, 358–61 (2004).

faith in the rule of law.<sup>60</sup> Such mechanisms can provide victims with a sense of justice, putting grievances to rest instead of allowing them to smolder until fanned into the next conflict,<sup>61</sup> and may, similarly, encourage reconciliation between peoples and groups. These mechanisms may promote democracy and educate the public about the past, preventing a return to conflict. Ambassador Williamson emphasized that the removal of human rights violators from society is likely to improve the overall political dynamic in post-conflict societies.<sup>62</sup> There may be other reasons besides their contribution to peace, moreover, for adopting accountability mechanisms in post-conflict societies,<sup>63</sup> including the pursuit of justice for its own sake and for the sake of victims' families, and the deterrence of future human rights violations.<sup>64</sup> In light of the peace-versus-justice debate,<sup>65</sup> however, we

<sup>60</sup> Clint Williamson, *Keynote*, 38 SETON HALL L. REV. 1253, 1263 (2008). See also JANE STROMSETH, DAVID WIPPMAN & ROSA BROOKS, CAN MIGHT MAKE RIGHTS: BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTION 250 (2006) (accountability strengthens the rule of law by building the public's confidence that they will be protected from predation, that disagreements can be resolved without resort to violence, and that legal and political institutions can protect rather than violate human rights).

<sup>61</sup> See Williamson, *supra* note 60, at 1261 (regarding the importance of avoiding escalation).

<sup>62</sup> See *id.* at 1255.

<sup>63</sup> See Mendeloff, *supra* note 59, at 362 (suggesting that peace and other potential benefits of accountability mechanisms should be treated as analytically distinct).

<sup>64</sup> See Williamson, *supra* note 60, at 1261 (regarding the deterrent effect of accountability mechanisms).

<sup>65</sup> A vast literature addresses accountability mechanisms, transitional justice, and the trade-off between peace and justice. For a survey, see Leslie Vinjamuri & Jack Snyder, *Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice*, 7 ANN. REV. POL. SCI. 345 (2004). From the legal literature, see, e.g., ATROCITIES AND INTERNATIONAL ACCOUNTABILITY: BEYOND TRANSITIONAL JUSTICE (Edel Hughes, William A. Schabas & Ramesh Thakur eds., 2007); MARK A. DRUMBL, ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW (2007); MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS (1998); POST-CONFLICT JUSTICE (M. Cherif Bassiouni ed., 2002); STROMSETH ET AL., *supra* note 60; PAUL R. WILLIAMS & MICHAEL P. SCHARF, PEACE WITH JUSTICE?: WAR CRIMES AND ACCOUNTABILITY IN THE FORMER YUGOSLAVIA (2002); Eric Blumenson, *The Challenge of a Global Standard of Justice: Peace, Pluralism, and Punishment at the International Criminal Court*, 44 COLUM. J. TRANSNAT'L L. 801 (2006); Leila Nadya Sadat, *Exile, Amnesty, and International Law*, 81 NOTRE DAME L. REV. 955 (2006); Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities*, 95 AM. J. INT'L L. 7 (2001); Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537, 2542 (1991). From the political science and policy literatures, see STEVEN D. ROPER & LILIAN A. BARRIA, DESIGNING CRIMINAL TRIBUNALS, SOVEREIGNTY AND INTERNATIONAL CONCERNS IN THE PROTECTION OF HUMAN RIGHTS (2006); Truth v. Justice (Robert I. Rotberg & Dennis Thompson eds., 2000); GARY JONATHAN BASS, STAY THE HAND OF VENGEANCE (2000); Matteo Tondini, *From Neo-Colonialism to a "Light-Footprint Approach": Restoring Justice Systems*, 15(2) INT'L PEACEKEEPING 237 (2008); Louis Aucoin, *Building the Rule of Law and Establishing Accountability for Atroci-*

might ask whether mechanisms for accountability are necessarily tied to the creation of an effective and fair legal system, consisting of law enforcement, courts, and corrections institutions. These two elements are not necessarily linked; they are independent of each other, or at least not completely dependent.<sup>66</sup> It is entirely possible to create a legal system based on the rule of law that contributes to the creation of a stable society, and does not incorporate a retrospective accountability mechanism. Several post-conflict societies have done just that, including post-Franco Spain, Namibia, and Mozambique.<sup>67</sup> Moreover, plenty of stable, otherwise peaceful regimes continue to exist in spite of their lackluster human rights records.<sup>68</sup> One empirical study has found little support for the claim that successful peace-building requires accountability mechanisms.<sup>69</sup>

In addition, the potential benefits also must be weighed against the potential for an accountability mechanism to disrupt, or undermine, progress toward a stable peace, at least in the short-term. Providing accountability may stir up old animosities that might better be left undisturbed. Accountability mechanisms could easily ensnare leaders of one side or the other, leaders who are essential players in the peace process and whose prosecution could inspire reaction from their followers.<sup>70</sup>

In considering the value of accountability mechanisms, we should distinguish between the short-term and the long-term development of peace.<sup>71</sup> One argument in favor of the proposition that

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*ties in the Aftermath of Conflict*, 8 WHITEHEAD J. DIPL & INT'L REL. 33 (2007); Mendeloff, *supra* note 59; Tonya L. Putnam, *Human Rights and Sustainable Peace*, in ENDING CIVIL WARS: THE IMPLEMENTATION OF PEACE AGREEMENTS 237, 239 (Stephen John Stedman et al. eds., 2002).

<sup>66</sup> See generally Mendeloff, *supra* note 59 (questioning the causal links and assumptions supporting the idea that accountability—"truth-telling"—is necessary to consolidate peace following civil war).

<sup>67</sup> See *id.* at 367.

<sup>68</sup> See Putnam, *supra* note 65, at 239 ("Examples abound, both historically and in the present day, of stable governmental regimes with very poor human rights records.").

<sup>69</sup> See Jack Snyder & Leslie Vinjamuri, *Trials and Errors: Principles and Pragmatism in Strategies of International Justice*, 28(3) INT'L SECURITY 5, 19–20 (2003/04) (finding that trials end abuses only when spoiler groups are weak and domestic legal infrastructure is reasonably well-established; that the capacity of truth commissions to promote reconciliation is more limited than proponents claim, that amnesties can help contribute to peace).

<sup>70</sup> But see Williamson, *supra* note 60, at 1255 (arrest of spoilers in Eastern Croatia and Bosnia did not lead to armed retaliation against NATO forces).

<sup>71</sup> See Snyder & Vinjamuri, *supra* note 69, at 241; Mendeloff, *supra* note 59, at 356, 362; but see Williamson, *supra* note 60, at 1261 (discussing the importance of dealing with past grievances for both short-term and long-term stabilization).

accountability mechanisms contribute to peace relies on the democratic peace theory: accountability mechanisms contribute to the growth of a democratic society, and democratic societies tend to be peaceful societies. Nevertheless, there is empirical evidence that societies in the process of transition to democracy are more prone than mature stable democracies to conflict, both international and civil.<sup>72</sup> Furthermore, societies emerging from conflict are fragile, and small shocks can have a disproportionate impact. In some cases, therefore, it may be important to find mechanisms that are less disruptive to prospects for peace. As William Burke-White put it during the Symposium, options exist for institutional design.<sup>73</sup> Peace and reconciliation commissions are alternatives to criminal models; the timing of adopting accountability measures can be flexible (whether they are implemented immediately following the conflict or in the long-term); and finally there are choices with regard to the composition of courts, whether domestic, hybrid, or international. In Bosnia, for example, the population was not ready after Dayton for a national accountability mechanism, but now the ICTY is handing some of its cases over to a new State Court of Bosnia and Herzegovina,<sup>74</sup> a domestic court with war crimes jurisdiction.<sup>75</sup>

#### IV. LEGAL OBLIGATIONS

The roles played by international actors in post-conflict reconstruction are varied; it is common for countries emerging from conflict to have poorly functioning governmental institutions or for significant legitimacy problems to arise. As a consequence, states may be unable to control or coordinate the international processes for reconstruction.<sup>76</sup> In some instances, international institutions have

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<sup>72</sup> See generally Edward D. Mansfield & Jack Snyder, *Turbulent Transitions: Why Emerging Democracies Go to War*, in LEASHING THE DOGS OF WAR: CONFLICT MANAGEMENT IN A DIVIDED WORLD 161 (Chester A. Crocker, Fen Osler Hampson & Pamela Aall eds., 2007).

<sup>73</sup> See William Burke-White, Address at the Seton Hall Law Review Symposium: When the Fighting Stops: Roles and Responsibilities in Post-Conflict Reconstruction (Nov. 2, 2007). See also DRUMBL, *supra* note 65 (suggesting alternatives to the criminal model, including local, bottom-up approaches and diversification of methods to include truth commissions and other mechanisms).

<sup>74</sup> See Burke-White, *supra* note 73.

<sup>75</sup> See generally William W. Burke-White, *The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina*, 46 COLUM. J. TRANSNAT'L L. 279 (2008).

<sup>76</sup> Bruce D. Jones, *Strategic Coordination of International Engagement*, in IRAQ: PREVENTING A NEW GENERATION OF CONFLICT 278 (Markus E. Bouillon et al. eds., 2007).

taken on significant responsibilities, actually displacing government authority, as they did in Kosovo and East Timor.<sup>77</sup> In other instances, they have created less intrusive regimes, such as the “light footprint” model in Afghanistan.<sup>78</sup> Another category of intervention involves a formal occupation of territory, such as the United States and United Kingdom’s occupation of Iraq. This spectrum of roles and responsibilities raises hard legal questions for actors in post-conflict reconstruction. What is the legal relationship between the occupiers or international actors involved in post-conflict reconstruction and the inhabitants of the territory? Are institutions with governance functions responsible only to their own members and mandates, or do they have attenuated fiduciary duties to the inhabitants?

It is generally accepted that actors engaged in governance functions in post-conflict reconstruction have fiduciary-like duties to the occupants.<sup>79</sup> This is because control over the administration of the territory and allocation of resources leaves local populations vulnerable to the risk of misconduct. The “sacred trust” inherent in internationally administered mandate systems required member states to promote political, economic, social, cultural, and educational well-being. This history informs contemporary legal norms: peacebuilders and international administrators exercising public authorities must act in the best interests of local inhabitants.<sup>80</sup> Similar obligations are implied in the Geneva Conventions: occupying powers are required to assume onerous responsibilities for the welfare of the occupied population, they are required to take all steps in their power to further public order and safety, and they are usufructs in the management of public property.<sup>81</sup>

<sup>77</sup> Boon, *supra* note 8, at 312–13.

<sup>78</sup> SIMON CHESTERMAN, *YOU THE PEOPLE* 88 (2005).

<sup>79</sup> Gerald B. Helman & Steven R. Ratner, *Anarchy Rules: Saving Failed States*, *FOREIGN POL’Y*, Winter 1992–1993, at 89.

<sup>80</sup> As Greg Fox notes, however, this association is suspect because the mandate systems were governed only for outsiders. The occupants were of little concern. When the goals of trusteeship became self-determination, during the decolonization movement of the 1960s, a shift occurred, which resulted in post–Cold War missions that put the interests of insiders at the forefront. See Gregory H. Fox, *HUMANITARIAN OCCUPATION* 29 (2008).

<sup>81</sup> Boon, *supra* note 8, at 304. The Security Council and the CPA reaffirmed and expanded these trusteeship duties during the occupation of Iraq, reaffirming the currency of these concepts. The Security Council required the Coalition Provisional Authority to “promote the welfare of the Iraqi people through the effective administration of the territory.” S.C. Res 1483, ¶ 4, U.N. Doc. S/RES/1483 (May 22, 2003). CPA Order No. 2 stated that all assets of the Iraqi Baath Party that had been transferred or acquired were subject to seizure by the CPA “on behalf, and for the benefit of the people of Iraq.” Coalition Provisional Authority, Order No. 2, CPA/ORD/02,

Post-conflict reconstruction can create fundamental conflicts of interest for international actors in that the “best interests” of the inhabitants of post-conflict zones may be irreconcilable with the interests of the major international stakeholders.<sup>82</sup> After all, international organizations have a duty to fulfill their mandates, and an institution such as the IMF might decide it must insist upon structural reforms and tight monetary policies that protect major industrialized countries, even if this brings about severe consequences in the recipient country. On the other hand, if the objective of multilateral economic reconstruction is to create a basis for sustainable self-government, IFI objectives must be altered to correspond to the people’s right to self-determination. An attenuated fiduciary-like duty should therefore prevail, such that an institution’s obligations to other constituencies such as stakeholders and markets are relaxed in favor of the inhabitants’ protection.<sup>83</sup>

#### VI. U.S. FOREIGN POLICY

Two predominant lessons have resulted from the U.S. experience in Iraq and Afghanistan.<sup>84</sup> First, a significant relationship exists between the level of inputs and the quality of output: higher or lower levels of effort, including levels of military manpower and economic assistance, will affect success or failure. Post-conflict reconstruction cannot be done successfully on the cheap. Second, the role of neighboring states is crucial, so that engaging with them is necessary, even if the United States otherwise is not favorable to them. Put differently, opposition from neighboring countries will doom a reconstruction exercise because neighboring countries have too much access, influence, and incentive to interfere.

The United States has taken steps to improve its capacity in post-conflict reconstruction. In 2004, the United States established within the State Department the Office of the Coordinator for Reconstruction and Stabilization (S/CRS), whose primary function is to coordinate and develop civilian government capacity to address post-

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May 23, 2003, *available at* <http://www.casi.org.uk/info/cpa/030523-CPA-Order2.pdf>. Furthermore, the management schemes implemented by the Council to oversee Iraqi Oil reinforced the Iraqi peoples right of national sovereignty over natural resources, and confirmed that occupiers cannot prejudice the substantive rights of statehood.

<sup>82</sup> See Boon, *supra* note 50, at 574.

<sup>83</sup> *Id.* at 575.

<sup>84</sup> See James Dobbins, Address at the Seton Hall Law Review Symposium: When the Fighting Stops: Roles and Responsibilities in Post-Conflict Reconstruction (Nov. 2, 2007).



conflict situations.<sup>85</sup> Two Symposium participants have served or are serving as head of S/CRS: Ambassador Clint Williamson played in a significant role in the creation of S/CRS,<sup>86</sup> serving as its first Coordinator, and Ambassador John Herbst serves as the current coordinator.

S/CRS has led the development of an interagency management system to prepare a plan of operations to coordinate the actions of U.S. civilian agencies, along with the military, in a stabilization crisis. More significantly, the agency is developing a Civilian Response Corps, consisting of civilian experts who can deploy to aid in post-conflict situations in areas such as engineering, public administration, rule of law, and economics.<sup>87</sup> A portion of these experts would be dedicated, permanent employees from various agencies, a larger group would consist of permanent government employees on standby, and others would be members of a civilian reserve corps, which would operate like the reserves in the military. Eventually, the corps would consist of 2250 experts, plus the civilian reserve. As of July 2008, however, this initiative has been only partially funded and awaits further Congressional authorization.<sup>88</sup>

While this effort is laudable, one may question whether its scope and size is adequate, especially as Congress has, so far, failed to fully fund it. Furthermore, it is surprising that a nation with so much experience in nation-building should have been so ill-prepared for the rebuilding efforts in Iraq and Afghanistan, finding itself in the position of playing catch-up. As James Dobbins points out, by 2003 there was no country in the world with more experience in nation-building than the United States. During the Cold War, the United States invaded a new country every ten years and in the 1990s participated in a new nation-building exercise every two years, while also supporting

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<sup>85</sup> See U.S. Dep't of State, Office of the Coordinator for Reconstruction and Stabilization, <http://www.state.gov/s/crs/> (last visited Oct. 16, 2008).

<sup>86</sup> See Williamson, *supra* note 60, at 1259–61 (describing role in establishing S/CRS).

<sup>87</sup> See Press Release, Office of the Spokesman, U.S. Dep't of State, The Civilian Response Corps of the United States of America (July 16, 2008) [hereinafter Civilian Response Corp], *available at* <http://www.state.gov/r/pa/prs/ps/2008/07/107063.htm>. The Civilian Response Corps was officially rolled out on July 16, 2008. Secretary Condoleezza Rice, U.S. Sec'y of State, Remarks at the Civilian Response Corps Rollout (July 16, 2008), *available at* <http://www.state.gov/secretary/rm/2008/07/107083.htm>.

<sup>88</sup> See Civilian Response Corp, *supra* note 87 (launch of the corps made possible by a \$75 million supplemental appropriation; President requested funding to expand the corps for the 2009 fiscal year).

U.N. operations.<sup>89</sup> At the end of the 1990s, the United States willfully jettisoned this experience, because of a new administration determined to avoid nation-building, perhaps because Congress and the voters were unwilling to pay for it.

The second lesson—that the United States must engage with neighboring countries in its post-conflict efforts—returns us to the intersection of security and justice issues. Simply put, sometimes the neighbors will not be cooperative. Some neighboring countries will have regimes hostile to the United States (Iran and Syria, for example) or will have atrocious human rights records (Syria and Pakistan, for example). Some people may counsel that the United States should not engage with either type of regime: the United States should isolate both hostile regimes and human rights violators as a means of forcing them to change. Surely, however, if anything can be learned from the last few years of U.S. foreign policy, it is that non-engagement usually is not productive, and may even be counter-productive. In the post-conflict context, moreover, non-engagement with neighboring countries is likely to result not simply in a frustrated peacebuilding effort but also in the loss of many lives and the undermining of a potentially stable society.

As the only superpower, the participation of the United States in post-conflict reconstruction can have an outsized effect in particular cases, and U.S. policies and goals may very well conflict with the policies and goals of other actors. Where the United States perceives its interests as paramount and where the United States has committed significant resources, the United States will seek to dominate the agenda, for good or ill. This domination is particularly evident in Iraq, where the United States permitted only a limited role for the United Nations and other countries. At times in Iraq, the feeling was reciprocal: other international actors were not sure they wanted to share the effort, and the blame, with the United States.<sup>90</sup> Certainly, however, U.S. policy in Iraq did not correspond with the preferences of much of the international community.

Yet in other situations, U.S. policy and goals may coincide with those of the United Nations and other states, or the United States and the international community may reach a *modus vivendi*. First, some missions may be possible only where a powerful state or a regional organization takes the lead. Some missions may require the use of overwhelming force, and the United Nations “does not do in-

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<sup>89</sup> Dobbins, *supra* note 84. See also DOBBINS ET AL., *supra* note 4, at xvii.

<sup>90</sup> See, e.g., Jones, *supra* note 76, at 277, 293.

vasions.”<sup>91</sup> In these cases, a primary role for the United States may be necessary, with the expectation from all parties that the United States will play a lead role. Second, there are operations where the U.S. role is more integrated into a broader international effort, such as in Kosovo. Finally, in some operations, the U.S. role is minimal or non-existent. Even in these operations, U.S. material or political support may contribute to the success of a mission.

Accordingly, in reality there often seems to be a tradeoff between the extent of a U.S. role in particular missions and the degree of U.S. control. The question may legitimately be raised whether greater U.S. participation entitles the United States to greater weight. After all, the United Nations acts on behalf of all its members, not just as an adjunct to one great power. In addition, the dominant role of the United States may taint the legitimacy of a mission under an international umbrella.

But it is precisely the legitimacy umbrella of the United Nations and other international organizations that gives those organizations some leverage in relations with the United States.<sup>92</sup> The United States simply does not possess the legitimacy of the United Nations or its reputation for even-handedness; consequently, the United States needs international organizations, both for missions it cannot undertake and even for missions in which it participates. Even in Iraq, it became clear that the United States needed international partners to increase the legitimacy of the peacebuilding effort, for example, turning to the United Nations to assist in the establishment of an interim authority and the operation of elections.<sup>93</sup>

In addition, the United Nations provides the most appropriate vehicle for the majority of peacebuilding missions. United Nations peace missions operate at comparably low cost, boast a comparatively high rate of success, and possess that intangible benefit of comparative legitimacy.<sup>94</sup> The number of U.N. successes<sup>95</sup> far outweighs the few well-publicized failures, demonstrating the continuing value of U.N. peace operations in particular, and peace operations in general.

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<sup>91</sup> DOBBINS ET AL., *supra* note 4, at xxi.

<sup>92</sup> Boon, *supra* note 50, at 549.

<sup>93</sup> See, e.g., Grant T. Harris, *The Era of Multilateral Occupation*, 24 BERKELEY J. INT’L L. 1, 61–67 (2006).

<sup>94</sup> See DOBBINS ET AL., *supra* note 4, at xxi.

<sup>95</sup> Successful U.N. peacebuilding operations include Bosnia, Kosovo, Cambodia (debatable), Namibia, El Salvador, Mozambique, Sierra Leone, and Liberia. See *id.* at vi.

## VII. CONCLUSION

Because of the number of domestic and international actors engaged in post-conflict reconstruction, coordination is necessary, even among different agencies within states. But coordination—avoiding duplication, trying not to step on one another's toes—is not sufficient. To maximize the benefits of joint action, it is also necessary to prioritize among different goals. Prioritization, however, is rendered extremely difficult by the horizontal nature of international relations, by the sovereign nature of states, by the separate identity and independence of the international organizations they create, and even by the independence of civil society members. Prioritization is not simply a matter of coordination; it is a matter of contestation, of conflict between actors.

Can institutions whose ostensible purpose is to coordinate among actors in this environment be successful? The Symposium examined two such institutions, in both the international and the domestic contexts: the PBC and S/CRS. It seems that the odds are stacked against the PBC, and perhaps also against S/CRS, given the low level of resources the latter has attracted. According to Jenkins, however, there are signs that the PBC has made some inroads in changing policies as they relate to the specific countries on the PBC agenda.<sup>96</sup> These inroads may simply be marginal, of little lasting importance, serving only to promote the survival of the PBC and its sub-institutions as bureaucratic players. Or, they may create openings for their institutions to make greater changes in the future.

The priorities among the goals of post-conflict reconstruction—security, economic well-being, justice and reconciliation, governance and participation—are not self-evident. Policies which may promote long-term economic health may in the short-term compromise security and the development of stable government institutions. Similarly, accountability mechanisms may also undermine short-term security interests, and vice-versa. It seems to us that, in many situations, significant security and stability interests should take priority in the immediate post-conflict period over other goals. Without a secure environment, the other goals will be impossible to achieve in the short-term and in the long-term.

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<sup>96</sup> See generally Jenkins, *supra* note 23.